

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Adversary Proceeding
LETARSHA MACK)	
(Chapter 7 Case <u>98-42036</u>))	Number <u>00-4003</u>
)	
<i>Debtor</i>)	
)	
)	
)	
BARNETT FINANCE)	
COMPANY, INC.)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
LETARSHA MACK)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Debtor filed a Chapter 7 bankruptcy case on December 17, 1999. At the time of filing she owed money to the Plaintiff, Barnett Finance Company, Inc. (“Barnett”), secured by a 1993 Mercury Topaz vehicle for the stipulated outstanding balance of \$7,648.08. The Plaintiff brings this action seeking a determination that the debt is non-dischargeable under 11 U.S.C. § 523(a)(6) which provides as follows:

(a) A discharge under section 727, 1141, 1228(a) 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

The Debtor purchased a used 1993 Mercury Topaz in February of 1998 and drove it until approximately August of 1999. In the interim she experienced numerous mechanical problems with the vehicle, but kept it repaired and in running condition. In August, however, the engine apparently blew and she was unable to return all the way to her then current residence because of this engine failure. Instead, she pulled into a convenience store, located on U. S. Highway 80 in Chatham County, Georgia, where she parked the vehicle. She testified, and that testimony is uncontradicted, that she had permission from the employees of the convenience store to leave the vehicle there because they knew her then boyfriend. At some time in the future, after she saved enough money to attempt to have the car repaired, she returned to the convenience store only to discover that the car was missing. She inquired into the whereabouts of the vehicle and was informed that it had most likely been towed by Sapp's Auto Repair and Towing Service. Upon inquiry with Sapp's, however, she was unable to find the vehicle. Debtor suspended any further efforts to locate the vehicle because of the difficulty she had with it and abandoned any interest in it at that time. Now, the vehicle cannot be located despite efforts by both the Plaintiff and the Defendant to determine its whereabouts.

The creditor, Barnett Finance Company, brings this action seeking an

exception from discharge under 523(a)(6) , arguing that the Debtor's conduct in her willful abandonment of the collateral constituted a conversion, which satisfies the requirement of a willful and malicious injury to the collateral. The Debtor contends that while her actions may amount to negligence there is no evidence of any legally sufficient intent to injure the creditor's interest because she in good faith left the vehicle in a place where she thought it could stay for some period of time and that it was removed from that premises without her knowledge or permission.

In order to deny discharge under section 523(a)(6) the creditor must prove, by a preponderance of the evidence, that its claim is nondischargeable because of a willful and malicious injury by the debtor to another entity or the property of another entity. 11 U.S.C. §523(a)(6), *See Grogan v. Garner*, 498 U.S. 279, 291, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). The Supreme Court, in the case of *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998), held that a debt under section 523(a)(6) will only be nondischargeable if it results from a deliberate and intentional injury, not merely a deliberate or intentional act that leads to injury. *Kawaauhau v. Geiger*, 523 U.S. at 61. These debts, which will be excepted from discharge, fall in the category of intentional torts, which require that the "actor 'intend the consequences of an act,' not simply 'the act itself.'" *Id.* at 61-62.

This Court has ruled in the past that abandonment of a vehicle can amount to a conversion of property, thus denying discharge under 523(a)(6). In *First Franklin*

Financial v. David A. Johnson (In re Johnson), Ch. 7 Case No. 96-40938, Adv. No. 98-4117; slip op. (S.D. Ga., Dec. 30, 1998), this Court held that the Debtor, who had been uncooperative with the creditor in having a vehicle towed to a junkyard because it would no longer operate, and in failing to notify the creditor and inform them of the condition of the collateral or of its whereabouts, intended “to deprive the creditor of its lawful exercise of its rights in the collateral by disposing of the collateral without the creditor’s knowledge or consent.” First Franklin Financial v. David A. Johnson (In re Johnson), slip. op. at 6.

In the present instance, however, the conduct of the Debtor, though it may be deemed negligent or careless, is factually distinguishable from that in the First Franklin Financial v. David A. Johnson (In re Johnson) and does not rise to the standard set forth in Kawaauhau v. Geiger, 523 U.S. 57 (1998), which would preclude discharge under 523(a)(6). Here, the Debtor left the vehicle at the convenience store after gaining permission from persons known to her boyfriend and later returned to reclaim said vehicle. While her conduct may be deemed as negligent in leaving the car at the convenience store, it does not rise to the level of willful and malicious injury needed for a conversion to deny discharge under 523(a)(6) as there may be conversions that are “innocent or technical” which are “unauthorized assumptions of dominion without willfulness or malice.” Davis v. Aetna Acceptance Co., 293 U.S. 328, 332, 55 S.Ct. 151, 79 L.Ed. 393 (1934). The evidence presented to this Court establishes that the Debtor did not, at any time, intend to abandon the car, and in fact, planned to have it repaired as soon as she was able to fund the repairs, indicating that the intent necessary to deny discharge under 523(a)(6), specifically in light

of the holding in Kawaauhau v. Geiger, 523 U.S. 57 (1998) is not present in this case.

O R D E R

Accordingly, IT IS THE ORDER OF THIS COURT that the complaint is dismissed and Debtor's obligation to Barnett Finance Company, Inc., is dischargeable.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of September, 2000.